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(b) The contracting officer must insert the provision in 3452.215-70, in all solicitations that include a reference to FAR 52.215-1 (Instructions to Offerors—Competitive Acquisitions).

Subpart 3415.3—Source Selection

3415.302 Source selection objective.

3415.302-70 Two-phase source selection.

(a) FSA—May utilize a two-phase process to solicit offers and select a source for award. The contracting officer can choose to use this optional method of solicitation when deemed beneficial to the FSA in meeting its needs as a PBO.

(b) Phase One.

(1) The contracting officer must publish a notice in accordance with FAR 5.2, except that the notice must include limited information as specified in 3405.207.

(2) *Information Submitted by Offerors.* Each offeror must submit basic information such as the offeror's qualifications, the proposed conceptual approach, costs likely to be associated with the approach, and past performance data, together with any additional information requested by the contracting officer.

(3) *Selection for participating in second phase.* The contracting officer must select the offerors that are eligible to participate in the second phase of the process. The contracting officer must limit the number of the selected offerors to the number of sources that the contracting officer determines is appropriate and in the best interests of the Federal government.

(c) Phase Two.

(1) The contracting officer must conduct the second phase of the source selection consistent with FAR 15.2 and 15.3, except as provided by 3405.207.

(2) Only sources selected in the first phase will be eligible to participate in the second phase.

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Subpart 3415.6—Unsolicited Proposals

3415.605 Content of unsolicited proposals.

(d) Each unsolicited proposal must contain the following certification:

UNSOLICITED PROPOSAL CERTIFICATION BY OFFEROR

This is to certify, to the best of my knowledge and belief, that—

a. This proposal has not been prepared under Federal government supervision;

b. The methods and approaches stated in the proposal were developed by this offeror;

c. Any contact with employees of the Department of Education has been within the limits of appropriate advance guidance set forth in FAR 15.604; and

d. No prior commitments were received from Departmental employees regarding acceptance of this proposal.

Date:

PART 3416—TYPES OF CONTRACTS

Subpart 3416.3—Cost-Reimbursement Contracts

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3416.303 Cost-sharing contracts.

3416.307 Contract clauses.

Subpart 3416.4—Incentive Contracts

3416.402 Application of predetermined, formula-type incentives.

3416.402-2 Performance incentives.

3416.470 Award-term contracting.

Subpart 3416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3416.603 Letter contracts.

3416.603-3 Limitations.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

Subpart 3416.3—Cost-Reimbursement Contracts

3416.303 Cost-sharing contracts.

(b) *Application.* Costs that are not reimbursed under a cost-sharing contract

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may not be charged to the Federal government under any other grant, contract, cooperative agreement, or other arrangement.

3416.307 Contract clauses.

(a) If the clause at FAR 52.216-7 (Allowable Cost and Payment) is used in a contract with a hospital, the contracting officer must modify the clause by deleting the words “Subpart 31.2 of the Federal Acquisition Regulation (FAR)” from paragraph (a) and substituting “34 CFR part 74, Appendix E.”

(b) The contracting officer must insert the clause at 3452.216-70 (Additional cost principles) in all solicitations of and resultant cost-reimbursement contracts with nonprofit organizations other than educational institutions, hospitals, or organizations listed in Attachment C to Office of Management and Budget Circular A-122.

Subpart 3416.4—Incentive Contracts

3416.402 Application of predetermined, formula-type incentives.

3416.402-2 Performance incentives.

(b) Award-term contracting may be used for performance-based contracts or task orders. *See* 3416.470 for the definition of *award-term contracting* and implementation guidelines.

3416.470 Award-term contracting.

(a) *Definition.* Award-term contracting is a method, based upon a predetermined plan in the contract, to extend the contract term for superior performance and to reduce the contract term for substandard or poor performance.

(b) *Applicability.* A Contracting Officer may authorize use of an award-term incentive contract for acquisitions where the quality of contractor performance is of a critical or highly important nature. The basic contract term may be extended on the basis of the Federal government’s determination of the excellence of the contractor’s performance. Additional periods of performance, which are referred to herein as “award terms,” are available for possible award to the contractor. As award term(s) are awarded, each ad-

ditional period of performance will immediately follow the period of performance for which the award term was granted. The contract may end at the base period of performance if the Federal government determines that the contractor’s performance does not reflect a level of performance as described in the award-term plan. Award-term periods may only be earned based on the evaluated quality of the performance of the contractor. Meeting the terms of the contract is not justification to award an award-term period. The use of an award-term plan does not exempt the contract from the requirements of FAR 17.207, with respect to performing due diligence prior to extending a contract term.

(c) *Approvals.* The Contracting Officer must justify the use of an award-term incentive contract in writing. The award-term plan approving official will be appointed by the HCA.

(d) *Disputes.* The Federal government unilaterally makes all decisions regarding award-term evaluations, points, methodology used to calculate points, and the degree of the contractor’s success.

(e) *Award-term limitations.*

(1) Award periods may be earned during the base period of performance and each option period, except the last option period. Award-term periods may not be earned during the final option year of any contract.

(2) Award-term periods may not exceed twelve months.

(3) The potential award-term periods will be priced, evaluated, and considered in the initial contract selection process.

(f) *Implementation of extensions or reduced contract terms.*

(1) An award term is contingent upon a continuing need for the supplies or services and the availability of funds. Award terms may be cancelled prior to the start of the period of performance at no cost to the Federal government if there is not a continued need or available funding.

(2) The extension or reduction of the contract term is affected by a unilateral contract modification.

(3) Award-term periods occur after the period for which the award term

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was granted. Award-term periods effectively move option periods to later contract performance periods.

(4) Contractors have the right to decline the award of an award-term period. A contractor loses its ability to earn additional award terms if an earned Award-Term Period is declined.

(5) Changes to the contract award-term plan must be mutually agreed upon.

(g) *Clause.* Insert a clause substantially the same as the clause at 3452.216-71 (Award-term) in all solicitations and resulting contracts where an award-term incentive contract is anticipated.

Subpart 3416.6—Time-and-Materials, Labor-Hour, and Letter Contracts

3416.603 Letter contracts.

3416.603-3 Limitations.

If the HCA is to sign a letter contract as the contracting officer, the SPE signs the written determination under FAR 16.603-3.

PART 3417—SPECIAL CONTRACTING METHODS

Subpart 3417.2—Options

Sec.

3417.204 Contracts.

3417.207 Exercise of options.

Subpart 3417.5—Interagency Acquisitions Under the Economy Act

3417.502 General.

Subpart 3417.7—Modular Contracting

3417.70 Modular contracting.

AUTHORITY: 31 U.S.C. 1535 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

Subpart 3417.2—Options

3417.204 Contracts.

(e) Except as otherwise provided by law, contract periods that exceed the five-year limitation specified in FAR 17.204(e) must be approved by—

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(1) The HCA for individual contracts; or

(2) The SPE for classes of contracts.

3417.207 Exercise of options.

If a contract provision allows an option to be exercised within a specified timeframe after funds become available, it must also specify that the date on which funds “become available” is the actual date funds become available to the contracting officer for obligation.

(f)(2) The Federal government may accept price reductions offered by contractors at any time during contract performance. Acceptance of price reductions offered by contractors will not be considered renegotiations as identified in this subpart if they were not initiated or requested by the Federal government.

Subpart 3417.5—Interagency Acquisitions Under the Economy Act

3417.502 General.

No other Federal department or agency may purchase property or services under contracts established or administered by FSA unless the purchase is approved by SPE for the requesting Federal department or agency.

Subpart 3417.7—Modular Contracting

3417.70 Modular contracting.

(a) FSA—May incrementally conduct successive procurements of modules of overall systems. Each module must be useful in its own right or useful in combination with the earlier procurement modules. Successive modules may be procured on a sole source basis under the following circumstances:

(1) Competitive procedures are used for awarding the contract for the first system module; and

(2) The solicitation for the first module included the following:

(i) A general description of the entire system that was sufficient to provide potential offerors with reasonable notice of the general scope of future modules;